

U.S. Department of Commerce Oakland Export Assistance Center

Seoul Focus: Doing Business with South Korea

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David R. Socher, Esq.

Wendel, Rosen, Black & Dean LLP

United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG]

52 Federal Register 6262, 6264-6280 (March 2, 1987); U.S.C.A., Title 15 Appendix (Supp. 1987)

<http://cisgw3.law.pace-edu/cisg/text/treaty.html>

Signatories

70 Countries are signatories

- U.S. – January 1, 1988
- Republic of Korea – March 1, 2005
- China (PRC) – 1988
- Except – UK, Japan and most of Africa

Contracting States



Argentina



Australia



Austria



Belarus



Belgium



Bosnia-Herzegovina



Bulgaria



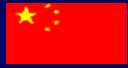
Burundi



Canada



Chile



China (PRC)



Colombia



Croatia



Cuba



Cyprus



Czech Rep.



Denmark



Ecuador



Egypt



El Salvador



Estonia



Finland



France



Gabon



Georgia



Germany



Greece



Guinea



Honduras



Hungary



Iceland



Iraq



Israel



Italy



South Korea



Kyrgyzstan



Latvia



Lesotho



Liberia



Lithuania



Luxembourg



Macadonia



Mauritania



Mexico



Moldova



Mongolia



Montenegro



Netherlands



New Zealand



Norway



Paraguay



Peru



Poland



Romania



Russian Federation



Saint Vincent & Grenadines



Serbia



Singapore



Slovakia



Slovenia



Spain



Sweden



Switzerland



Syria



Uganda



Ukraine



United States



Uruguay



Uzbekistan



Yugoslavia



Zambia

CISG

- Contracts for Sale of Goods
- Relevant places of business are different countries
- Countries are signatories or Rule of Law leads to signatory

Article I

CISG does not apply

- Personal family, household goods
- Auction
- Stocks, shares, securities, negotiable instruments, money
- Ships, vessels, hovercraft, aircraft
- Electricity
- Preponderant part of seller's obligations consist of supplying labor
- Real estate

The parties may exclude the application of this convention or . . . derogate from or vary the effect of any of its provisions

Article 6

- CISG is self executing treaty
- Effective as Law in all U.S. states
CA Law is CISG
- Applicable whether intended or not
- UK or Japan – may also apply

No Writing Required – Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Different from California Contract Law

- No parole evidence rule
- No statute of frauds

Oral warranties/guarantees are binding

Merger Clause

"This written agreement is the sole and final writing on this subject. All prior negotiations and promises are hereby merged into this final document. No evidence of contradicting provisions are admissible."

Part II

Contract Formation

- Offer and Acceptance

How is a contract formed?

- Offer: Proposal for concluding a contract
- Addressed to one or more specific persons
- Identifying goods
- Identifying quantity
- Provisions to determine price

Acceptance

- Statement or conduct indicating assent
- Not silence
- Within time fixed, reasonable time or performance

Battle of the Forms –

Article 19

Materially different = counter offer

- Quantity
- Quality
- Place/time delivery
- Liability/settlement
- Arbitration provision

- Not material alteration = contract on new terms unless offeror objects without delay.
- Last form wins

Breach of Contract

- Fundamental Breach
- Anticipatory Breach

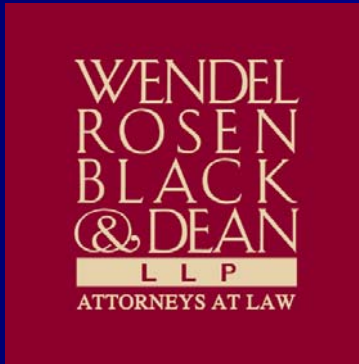
Remedies

- Specific Performance
- Substitution
- Avoidance

Damages

- Direct Losses
- Loss of Profit
 - Foreseeable
- Cover
- Mitigation

Thank you.



David R. Socher, Esq.
1111 Broadway, 24th Floor
Oakland, CA 94607
(510) 622-7613